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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BALTAZAR MAGALLON-DEL TORO,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

Nos. 04-75405
05-70257

Agency No. A76-342-659

MEMORANDUM*

On Petitions for Review of Orders of the
Board of Immigration Appeals

Submitted June 18, 2008**

Before: LEAVY, HAWKINS, and W. FLETCHER, Circuit Judges.

In these consolidated petitions, Baltazar Magallon-Del Toro, a native and citizen of Mexico, seeks review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's ("IJ") order and denying

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

his motion to remand, and the BIA order denying his motion to reconsider its earlier order. We have jurisdiction under 8 U.S.C. § 1252. We review de novo claims of due process violations, *Vargas-Hernandez v. Gonzales*, 497 F.3d 919, 921 (9th Cir. 2007), and for abuse of discretion the denial of motions to remand and reconsider, *Lara-Torres v. INS*, 383 F.3d 968, 972 (9th Cir. 2004), *amended by* 404 F.3d 1105 (9th Cir. 2005). We deny the petitions for review.

We are not persuaded that Magallon-Del Toro's counsel denied him the opportunity reasonably to present his case before the IJ, as the record indicates he sought voluntary departure in lieu of submitting a relief application after reasoned discussions with counsel. *Cf. Rodriguez-Lariz v. INS*, 282 F.3d 1218, 1226 (9th Cir. 2002).

The IJ did not violate Magallon-Del Toro's procedural due process rights because he was represented by counsel, was provided more than a year to submit a relief application, and declined the IJ's offer of an extension to submit an application, electing instead to request and accept voluntary departure. *See Vargas-Hernandez*, 497 F.3d at 927 (no due process violation when alien was given a full and fair opportunity to be represented by counsel, prepare her relief application and present testimony and evidence in support of her application). The record also indicates Magallon-Del Toro understood his immigration proceedings

and the consequences of having his attorney waive his appeal on his behalf. *Cf. Biwot v. Gonzales*, 403 F.3d 1094, 1098 (9th Cir. 2005).

As Magallon-Del Toro's due process rights were not violated, the BIA did not abuse its discretion in denying his motions to remand and reconsider. *Lara-Torres*, 383 F.3d at 976.

PETITIONS FOR REVIEW DENIED.